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**REMARKS**

Claims 1, 2, 8-10, 16, 17 and 23-25 are pending in the application. Amendments have been made to claims 1, 8, 16, and 23 for clarification purposes. No new matter has been included thereby.

**Claim Rejections under 35 USC 102**

The Examiner rejected claims 1, 8-9, 16, and 23-24 under 35 U.S.C. 102(b) as being anticipated by Eitan et al. (US Patent No. 4,998,220). Applicants respectfully submit that claims 1, 8-9, 16, and 23-24 as amended are patentable over the cited references. In particular Eitan et al. failed to show or suggest the combination of claim elements of claims 1, 8-9, 16, and 23-24. Among other things, Eitan et al. failed to show or suggest a drain region formed in a portion of the substrate which is proximate the portion of the control gate which is disposed over the channel region and being separated from the channel region by the second insulating layer. This can be seen clearly in Eitan Figs. 6, 7a, and 7b. For example in Fig. 7b, the portion of control gate 106 over the channel region 142 is proximate to the source region 110, and not proximate to the drain region (136). In fact Eitan et al. described a completely different device structure with different functions. According to MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, ..., in a single prior art reference. Therefore the Applicants submit that claims 1, 8-9, 16, and 23-24 are patentable over Eitan et al.

As previously noted, Eitan et al. described a completely different device structure with different functions. For example, there are other differences between Eitan et al. and the invention recited by the combination of claim elements of claim 1. In particular, Eitan et al. failed to show or suggest a source region having a substantial portion underneath the floating gate. On the contrary, Eitan et al. kept the floating gate (104a) away from the source region (110) by the channel region (142) (Fig. 7b and also Fig. 6)

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or kept the floating gate (104a') above a thick field oxide region (105a) (Figs. 6, 7a, 7d, and 7e and Col. 8 lines 14 – 26).

Dependent claims 9 and 24 that are dependant from claims 8 and 23, respectively, are at least patentable for the reasons given above. Here, Eitan et al. failed to show or suggest the combination of elements included in claim 9 when combined with independent claim 8. Eitan et al. also failed to show or suggest the combination of elements included in claim 24 when combined with independent claim 23.

In summary, Eitan et al. failed to show or suggest the combination of elements of the instant invention as recited in claims 1, 8-9, 16, and 23-24. Accordingly, claims 1, 8-9, 16, and 23-24 are patentable over Eitan et al.

#### **Claim Rejections under 35 USC 103**

The Examiner rejected claims 2, 10, 17, and 25 under 35 U.S.C. 103(a) as being unpatentable over Eitan et al. (US Patent No. 4,998,220) in view of Chang (US Patent No. 6,125,060). Because claim 2 depends from patentable claim 1, claim 2 is therefore patentable for at least the reasons given above. Similarly dependent claims 10, 17, and 25 are patentable for at least the reasons given above. To establish a *prima facie* case of obviousness three basic criteria must be met (MPEP 2143): suggestion or motivation to modify or combine reference teachings, reasonable expectation of success, and inclusion of all the claim limitations in the prior art reference. It is clear that for at least the reasons given above, Eitan et al. and Chang, taken either singly or in combination failed to teach or suggest all the claim limitations recited in dependent claims 2, 10, 17, and 25 when combined with claims 1, 8 and 9, 16, 23 and 24, respectively. Further, there was no motivation to combine Chang with Eitan et al. or a reasonable expectation of success for such combination. Therefore the Applicants submit that claims 2, 10, 17, and 25 are patentable over Eitan et al. in view of Chang.

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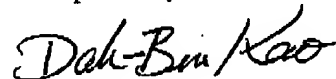
Having thus amended the application for clarification and having established that the cited references, either taken either singly or collectively, failed to show or suggest the combination of claim elements of the claims in the present application, Applicants respectfully submit that claims 1, 2, 8-10, 16, 17, and 23-25 of the application are in condition for allowance. It is respectfully requested that the rejections be reconsidered, and early notice thereof is solicited for the allowability for claims 1, 2, 8-10, 16, 17, and 23-25 as currently amended.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 408-474-1634.

Respectfully submitted,



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